

From: Broyles, Ragan
To: [Smith, Monica](#)
Subject: RE: draft response to inaccurate statement in OECA report.
Date: Tuesday, May 07, 2013 4:08:29 PM

They say we are not following the Enforcement Response policy while we say that the ESA policy is part of the National Enforcement Response policy. Which is it? We don't address their contention that we are not following the NSI. Should we? Also we don't mention injunctive relief and that it does or doesn't apply in our typical RMP case. Should we? I would also like to comment more on our penalties and how they relate to the penalty matrix, if they do? Lets discuss.

From: Smith, Monica
Sent: Tuesday, May 07, 2013 3:00 PM
To: Broyles, Ragan; Phillips, Pam
Subject: draft response to inaccurate statement in OECA report.

This is in response to the OECA Region 6 Progress Report draft 5-3-2013
These questions are found on pages 3 and 4 of the report

Questions

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1. Is Region 6 continuing to move resources from the judicial enforcement work to administrative enforcement work? Is this shift impacting outcome results?
2. Does the referral backlog at DOJ continue to be an issue? **YES – for both CWA 311 and CAA 112 R CASES. The Mossville waivers for 3 facilities are still pending in DOJ. Inspections were completed in 2010, waiver requests sent to DOJ in 2011.**
3. In FY 12, total initiation and conclusion outputs were below prior year averages. Based on the output results in FY 12, does the Region foresee declines in outcomes in FY 13? **Yes for both programs - OPA focus on larger high risk offshore facilities; CAA 112r – Superfund Division RMP has reduced the number of inspections thus, the number of cases will be reduced.**
4. Given the fire and explosion at West Fertilizer and the fire at an Exxon Mobile facility last week, what is the Region's plan moving forward for these two events? **West Fertilizer – the Superfund RMP program and the CID have developed a parallel preceeding memo and are reaching out to OSHA and the CSB to join in the effort. The Superfund program will lead any inspections and resulting enforcement for this facility as it is a Non-Title V RMP facility unless a decision is made to pursue a GDC.**
5. How have you changed your administrative practice post Sackett? **NO**

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The following language is found on pages 6 and 7 of the report. A draft response is included in bold/italics

For the 112(r) program, regional inspection numbers have increased significantly over the past two fiscal years. However, most of the increase has been at facilities not considered high-risk. The Region utilizes low penalty expedited settlements for violations that should result in a formal enforcement response and is generally not following the NSI policy or the Enforcement Response Policy, despite numerous discussions on this topic. In addition, the Region is not requiring the injunctive relief, return to compliance and the recapture of economic benefit that create a meaningful deterrent to future violations. We look forward to continuing to work with the Region to develop a program that allows a quick and efficient response while achieving injunctive relief that could prevent future violations as appropriate.

The majority of the 2291 RMP facilities in Region 6 are not considered High Risk. The RMP program is split within Region 6 and that the split in responsibilities has worked well over the past 8 plus years in ensuring compliance with the RMP program by the regulated community not only in Region 6, but across the country. The Superfund Division is responsible for ensuring compliance with the Non-Title V facilities and the Enforcement Division oversees the Title V program. The Region decided in early 2000 to have the Superfund Division take on the responsibility for ensuring compliance of that the RMP program for all Non-Title V facilities due to the large number of releases involving the non-title V facilities the Region 6 Emergency Response program was involved in addressing. We saw it as a preventive measure and an investment which would pay off in the long run. This has paid off not only in Region 6, but across the country. We do not plan on changing this approach.

Region 6 piloted the ESA process for RMP which became the model for all Regions. Two years ago the penalties under the ESA policy were increased. Region 6 has been adhering to the ESA policy which is part of the National Enforcement Response Policy to determine whether to issue and ESA or an administrative penalty. We do not use the ESAs:

- if the violations pose an imminent and substantial endangerment to human health and/or the environment;***
- for Title V sources;***
- if the total penalty generated by the ESA exceeds \$7500,***
- if there is evidence of a deliberate effort to conceal noncompliance.***
- if a source fails to provide records or other documents to EPA.***
- if a source is a repeat violator. A repeat violator is a violator who, in the past five years, has had the same or closely related violations 1) at the facility where the instant violation occurred or 2) at multiple facilities (i.e. three or more facilities, under the ownership, operation, or control of the violator).***

Since we have not gone through all of our facilities, we have not had many repeat violators which would result in higher administrative penalties.

Region 6 has and continues to fall in line with OEM and OECA National Program Manager's guidance in reducing the NPM (and GPRA) national target for RMP inspections, while simultaneously raising the percentage of those inspections that must be conducted at high-risk facilities. Region 6 has continually met or exceeded your national target for performing RMP inspections at high-risk facilities. We plan on meeting the NPM 2013 target of inspecting 4% of the RMP universe of which 40% will be High Risk Facilities.

We are of the opinion that while the penalties may not be substantial the level of compliance across the Region and country, which is the goal of the program, is greatly exceeded. We believe we are in line with the February 2012 addendum to the 2011-2015 EPA Strategic Plan and with the January 18, 2011 "Presidential Memorandum – Regulatory Compliance " by continuing to implement our ESA program which provides for consistent and sound regulatory enforcement which promotes the welfare of Americans. The ESA program implements strategies that use resource more efficiently and finds opportunities to focus and leverage efforts to assure compliance with environmental laws. ESAs have increased EPA's enforcement presence without expending additional resources. As a result of our ESA process, compliance rates have increased within companies at a national level. Facilities are in compliance within 90 days or less of the inspections and are better prepared to prevent chemical accidents and releases through a program of preparedness, response and prevention. The compliance by these facilities protects human health and the environment thereby providing safe communities.

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